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REPORT OF COMMITTEE

APPOINTED BY THE

GENERAL ASSEMBLY OF THE CHURCH OF SCOTLAND,

FOR THE PURPOSE OF REPORTING ON THE BEST METHOD OF REGULATING THE

REGISTRATION

OF

BIRTHS, DEATHS, AND MARRIAGES

IN

SCOTLAND.

GIVEN IN AND READ BY

DR JAMES STARK, CONVENER,

30TH MAY 1853.

C
EDINBURGH:

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MDCCCLIII.



EDINBURGH, 30th May 1853.

Inter alia,

The General Assembly called for the Report of the Committee on Registration, which was given in by Dr STARK, the Convener, and read.

The General Assembly highly approve of the diligence of the Committee, and record their thanks to the Convener and the Committee; direct the Report to be printed and circulated according to the recommendation of the Committee; and that the "Summary of Notes on Irregular Marriages" now read to the Assembly be printed as an Appendix to the Report; and that it be recommended to Presbyteries to take the same into consideration; reappoint the Committee, Dr STARK to be Convener.

R E P O R T.

Your Committee have taken into consideration the remit of the General Assembly, and have become convinced that no efforts of the Church through its courts, of the Clergy individually, or of the Session-Clerks, could so improve the present Registers as to render them equal to the requirements of the public or of science.

In the first place, relative to the BIRTHS, your Committee have to report, that as there exists no legislative enactment compelling Registration of the Births, the present Registers are merely records of the Births or Baptisms of those children whose parents voluntarily enter them on the Register. By a return to an address of the Honourable the House of Commons, dated 6th August 1851, and published 3d February 1852, stating the number of Births, of Deaths, and of Marriages registered in each parish of each county in Scotland, in each year, since the 31st day of December 1841, it appears that only from one-fifth to one-third of the Births which occur in each parish are entered on the Registers.

In the second place, relative to the DEATHS, your Committee beg to report, that in the great majority of the parishes in Scotland no record whatever of the Deaths, or, more properly speaking, of the Burials, is kept. In others the Registers are so imperfectly kept, and give so few particulars, that they could not prove the identity of any individual who has deceased. In a few others, again, and this is the case in some of the large towns, the Registers are well kept, and are examples worthy of imitation by all the parishes in Scotland.

In the third place, relative to the MARRIAGE REGISTER, your Committee beg to report that, though these Registers

are kept with more or less care by nearly every parish in Scotland, they are, in their present state, very defective as regards the purposes for which Registration of Marriage is desirable, and are practically useless for public and scientific purposes:

The most serious objection to these Registers is, that they do not register the *fact* of the marriage, but only the *proclamation of the intention to marry*; and though several active Session-Clerks have used various means to get over this difficulty, they have never succeeded in getting the whole of the parties afterwards to return and register the fact of the Marriage. This circumstance, therefore, destroys the value of such Registers for any public or scientific purpose. For instance, within the Royalty of Edinburgh, for the years 1845, 1846, and 1847, there were issued 1459 Proclamations of the Banns of Marriage; but of these only 867 were registered as having been completed by the marriage of the parties; while, of the remaining 582, no record is preserved to shew whether the parties subsequently married, or whether the marriage was put a stop to. It is a known fact, that a certain number of Marriages is annually put a stop to after Proclamation of Banns. This is made apparent by the Glasgow returns, by which it appears that in that town there are, on an average, no fewer than 41 warrants of Marriage never called for. Another, and a serious source of error also exists in the present Registers, and that is, that when parties live in different parishes the Marriage is entered in the Registers of both; thus making it appear that the number of Marriages over Scotland is greater than it is in reality.

From these remarks it will be apparent that your Committee are justified in concluding that the present Registers are quite inadequate for the wants and requirements of the public and of science; and that nothing short of a legislative enactment, rendering it imperative on all to register the Birth, Death, and Marriage of every individual, can remedy the evil.

But while your Committee are convinced that the present Registers are inadequate for the requirements of the public and of science, they feel equally convinced that the present

machinery, acting under a legislative enactment, and under the control of a superintending Board, is quite sufficient for carrying out a scientific, practical, and economic plan of Registration.

The Session-Clerk (who is in general the schoolmaster) is the present legal Registrar, and it would be an act of injustice to deprive him of an office which he at present discharges well, so far as an opportunity of so doing is afforded him. Besides, in many of the Highland and Island parishes, the schoolmaster is almost the only man who possesses sufficient intelligence to act as Registrar; and he possesses the additional advantage of having, by virtue of his office, better means of communication with the parishioners than any other man, and of being looked up to by them as their friend and adviser. In most cases, the additional duties devolving on him, in consequence of his being appointed Registrar of Births, Deaths, and Marriages, would not interfere with his duties as schoolmaster more than the Session-Clerk's duties do at present; and in the few cases where, from certain circumstances, it would be inexpedient to ask him to undertake more duties than he has at present, this difficulty could be got over by allowing him to have a Deputy-Registrar under him, for whom he would be responsible. The reasons now assigned for continuing the present Session-Clerks as Registrars apply with equal force to their successors in office.

Your Committee, therefore, recommend that, in any application to Government to extend the benefits of Registration to Scotland, care should be taken to notice this point, and to direct attention to the fact, that a proved machinery already exists, which merely requires to be set in steady motion by a legislative enactment; that this machinery would be less expensive than any other; that it would require no superintendence from Sheriff-clerks, or otherwise; but that every Registrar should communicate directly with the head-office, from which Inspectors should, from time to time, be sent to examine into the manner in which the Registers are kept.

As to the mode by which the mere act of the Registration of the BIRTHS and DEATHS should be effected, your Committee are of opinion that the plan proposed from clauses 21 to

37 of the "Bill for the Registration of Births, Deaths, and Marriages in Scotland," as amended by the Select Committee of the House of Commons in May 1849, is as unobjectionable as any yet proposed. This plan is almost exactly the same as that now so successfully carried out in England, and which an experience of now fourteen years proves to work well.

Relative to the Registration of MARRIAGES, your Committee see no difficulty in registering them without any alteration in the present law of the constitution of Marriage in Scotland. Your Committee would propose that, when the lines for the Proclamation of the Banns of Marriage are given out, an additional schedule should be furnished containing the required particulars for the purposes of Registration; that, on the Marriage being solemnized, this schedule, with the required information filled in, should be signed by the parties contracting the Marriage, also by the witnesses, male or female, present at the marriage, and by the officiating clergyman; and that thereupon the clergyman should send the schedule by post to the Registrar of the district in which the marriage was solemnized, who should enter the same on the Marriage Register, and file and preserve the original schedule.

In order to secure the Registration of Irregular Marriages, your Committee recommend that parties so situated should be compelled to fill up and sign a schedule prepared for the purpose, with the heading "Irregular Marriage," and that they should compare personally at the Registrar's office, accompanied by two witnesses, and then and there declare their adherence to the statements contained in said schedule, which declaration should be duly testified by the signatures of the two witnesses and of the Registrar. The Registrar should then enter the particulars on the Marriage Register, and preserve the original schedule. In order to discourage as much as possible all Irregular Marriages, the fees for registering an Irregular Marriage should be double that of a Regular Marriage by Banns and before a clergyman.

By registering Marriages in this manner, no alteration would be required in the present law of the Constitution of

Marriage in Scotland. It is true that this would not prevent nor be any check on Irregular Marriages ; but it is not of these the Scottish people complain ; for, in fact, except in a few of the border parishes, Irregular Marriages are rare among them. Almost all the complaints on this head have come from the people of England, who almost alone now abuse the facilities of the Scottish Marriage Law ; and if they wish redress, they must seek it in an alteration of their own laws, not in an alteration of the Marriage Law of Scotland.

Your Committee, therefore, take the liberty of recommending that this Report be printed, and that a copy thereof should be sent to every Presbytery of the Church, and to every Member of both Houses of Parliament ; and that a Petition* to both Houses of Parliament should be drawn up and forwarded, praying Government to extend the benefits of Registration of Births, Deaths, and Marriages to Scotland, by bringing forward a bill with provisions conform to the above Report.

In name and by authority of the Committee.

JAMES STARK, M.D., *Convener*.

EDINBURGH, 4th April 1853.

APPENDIX.

Summary of Notes on Irregular Marriages.

During the late attempts to carry through a Registration measure for Scotland, an alteration in our Marriage Laws, so as to assimilate them to those of the amended Marriage Laws of England, was endeavoured to be forced upon us. The following summary of facts which have been carefully collected, and the details of which are now laid on the table of the General Assembly, will show how the proposed change would have effected Scotland.

* By the laws of the Church, a Petition to Parliament cannot be sent on the recommendation of a Committee till the Committee's Report has been approved of by a majority of the Presbyteries of the Church.

Taking the same class of Marriages among the English and among the Scottish people, viz., Marriages not *in facie ecclesiæ*, but which have been contracted in either country by the parties making a declaration to the effect they are husband and wife before a Justice of Peace, a Registrar, the Gretna blacksmith, or any low person who will perform a kind of ceremony, we find that, on a three years' average, not exceeding sixty such Marriages occur annually among the natives of Scotland, and these chiefly, or almost entirely, on the border. This gives the low proportion of one such Marriage annually in Scotland for every 47,846 inhabitants.

In England, during 1850, no fewer than 6207 couples contracted Marriage before the Registrars, and documents are laid on the table which prove that during the same year, 1091 English couples were married on the border by the Gretna blacksmith, toll-keepers, and others. This gives a total of 7298 Marriages among natives of England, of exactly the same class as the above-noticed Scottish Marriages, yielding the large proportion of one such Marriage for every 2455 souls.

These facts are the best arguments which could be adduced relative to the impolicy of meddling with our laws relative to the constitution of Marriage; and Scotsmen, seeing the working of the amended Marriage Laws of England, and how they have increased the proportion of Marriages not *in facie ecclesiæ*, should unite in raising their voices against assimilating their Marriage Laws, however loose or semi-barbarous lawyers may conceive them to be, to those of England.

Two remedies are proposed to put a stop to Irregular Marriages in Scotland.

First, To request all Judges and Magistrates to carry out the provisions of the Clandestine Marriage Act of 1661, which are sufficiently stringent, and still in full force, viz., that every couple marrying otherwise than before a clergyman, after proclamation of banns, should summarily be laid hold of, and be confined three months in jail, besides paying certain penalties; while the celebrator should be banished the realm, not to return under pain of death.

Secondly, Request all Kirk-Sessions to administer severe ecclesiastical discipline, which the above-noticed act gives full power to do, by subjecting the parties marrying irregularly to public church censure, and not re-admitting them to church privileges till they have been regularly proclaimed and regularly married.

The stringent application of the above-noticed Act of Parliament would not only put an end to Irregular Marriages among the Scottish people, but also quite stop the Marriage traffic from England, as no one would dare to marry the couples who came from England, from dread of the consequences.